

MINUTES
HOUSE HEALTH & WELFARE COMMITTEE

- DATE:** Monday, March 14, 2022
- TIME:** 8:00 A.M.
- PLACE:** Room EW20
- MEMBERS:** Chairman Wood, Vice Chairman Vander Woude, Representatives Gibbs, Blanksma, Kingsley, Christensen, Lickley, Erickson, Ferch, Mitchell, Chew, Rubel, Burns
- ABSENT/
EXCUSED:** None
- GUESTS:** The sign-in sheet will be retained in the committee secretary's office; following the end of the session the sign-in sheet will be filed with the minutes in the Legislative Library.
- Chairman Wood** called the meeting to order at 8:00 a.m.
- H 515aaS:** **Rep. Megan Blanksman**, District 23, presented **H 515aaS**. The Senate amendment provides for the continuation of the public health districts' risk management contracts.
- MOTION:** **Rep. Gibbs** made a motion to Concur with the Senate amendments to **H 515**. **Motion carried by voice vote. Chairman Wood** will sponsor the bill on the floor.
- H 756:** **Rep. Blanksma**, District 23, presented **H 756**, for crisis standards of care (CSOC) and access to loved ones when they are in hospitals. It establishes an ombudsman to field complaints during any CSOC. The ombudsman would be located, as during the pandemic, in the Governor's office. The Department of Health and Welfare (DHW) is required to review the existing health care system based on shortages experienced during the CSOCs.
- David Ripley**, Executive Director, Idaho Chooses Life, further presented **H 756**. This legislation brings Idahoans to the table to secure basic patient rights, even in the midst of a healthcare crisis. It creates accountability, requires specific mitigation to cease a CSOC, and designates an advocate for patients and families.
- The patients' rights provisions guarantee visiting rights for patients in hospitals and residential care facilities. It guarantees living wills will be honored. It stipulates food and water cannot be denied a patient unless they or their family makes that decision. Informed consent and conscience protections are preserved. Vaccination status cannot be used to withhold treatment. This is an important step forward for providing assurance and assistance to people in residential care facilities.
- Brian Whitlock**, representing the Idaho Hospital Association (IHA), testified **in support of H 756**. There were lessons learned during the CSOC which maximized resources. At a time when other states were closing hospitals and creating triage teams, Idaho was successfully managing and collaborating to assure all patients had care access. This legislation provides a framework to protect patient rights without jeopardizing patient access to care.
- Answering questions, **Mr. Whitlock** said this legislation speaks to public health emergencies or natural disasters, which may not cover all reasons for a CSOC declaration. In his opinion page 2, lines 32 and 33 capture the greater good.
- MOTION:** **Rep. Mitchell** made a motion to send **H 756** to the floor with a **DO PASS** recommendation.

Mr. Whitlock, in response to a further question, said the DHW Director will promulgate rules for the CSOC plan's operation.

In reply to questions, **Rep. Blanksma** stated the ombudsman's duties are already included with those of an existing staff member within the Governor's office. This is not intended to become a permanent position. The term "exercise of conscience" goes beyond religious principles.

Discussion revealed support for moving toward educating Idahoans regarding CSOCs and the continuation of collaboration between agencies and hospitals. Concern was expressed for not addressing local spontaneous CSOCs which may be needed for small hospitals.

**ROLL CALL
VOTE:**

Rep. Ferch requested a roll call vote. **Motion carried by a vote of 13 AYE, 0 NAY.** **Voting in favor** of the motion: **Reps. Wood, Vander Woude, Gibbs, Blanksma, Kingsley, Christensen, Lickley, Erickson, Ferch, Mitchell, Chew, Rubel, Burns.** **Rep. Blanksma** will sponsor the bill on the floor.

H 760:

Rep. Julianne Young, District 31, presented **H 760**. When dealing with specialized mental health issues which can be life threatening, Idaho's resources are limited. During the pandemic restrictions on interstate telehealth were suspended. With extensive stakeholder input, **H 760** continues this avenue of care for mental health and behavioral health providers. It excludes physicians, lists compliance requirements, removes prescriptive authority, and outlines the rules adoption process. This allows families to continue telehealth care accessed during the crisis.

Answering questions, **Rep. Young** explained this legislation insures a continuity of care. The sunset clause provides the opportunity for review.

MOTION:

Rep. Blanksma made a motion to send **H 760** to the floor with a **DO PASS** recommendation.

Responding to a question, **Rep. Young** said the Idaho Medical Association and the Idaho Psychology Association have stated they are neutral on this legislation.

**VOTE ON
MOTION:**

Chairman Wood called for a vote on the motion to send **H 760** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Young and De Mordant** will sponsor the bill on the floor.

S 1346aa:

Sen. Doug Ricks, District 34, presented **S 1346aa**, which applies cost limits for retrieving medical records. Third party companies contract with health care providers to process medical records requests. These are out-of-state entities. Without any guidance, they are free to charge whatever they want. This becomes vital as patients need the record copies to handle social security claims or other legal matters through requests made by their attorneys. It appears unreasonable for them to pay a lot of money for records they own.

In response to questions, **Sen. Ricks** explained the third party companies charge the fee at the time the attorney requests the records, which may be before the case is settled. The direct patient portal access provides only summarized records. When court cases are involved, the full record is needed. He questions why we are allowing personal medical records to leave Idaho. Without limits on the costs, the companies are taking advantage of Idahoans.

Matt Romrell, Attorney, testified **in support** of **S 1346aa**. He shared examples of per page charges for copies of his clients' records. Injured individuals are often physically unable to get records. He expressed concern the individuals are being charged for what they already own.

Answering questions, **Mr. Romrell** said requests are based on a release from the client. He has not experienced any redactions. Receipt of records have taken thirty days or longer after the request is made. Whether electronic or paper, the charge remains the same. Requests by the patient are an undue burden for someone who may be in the hospital or otherwise incapacitated. Larger providers will upload the information to their site and provide decryption access.

Matthew Andrew, Attorney, testified **in support** of **S 1346aa**. In his work representing injured workers and personal injury cases, he has found many medical providers contracting with medical retrieval services. Medical providers are the only ones legally able to have control of the information. By contracting with a third party, they are using that control to make money, with no choice available to the patient.

Mr. Andrew, in response to questions, stated his office has made numerous attempts to secure a breakdown of the charges. To date nothing has been provided. He has not seen any redactions. This is an unregulated sphere and these entities are exclusive controllers of the services.

Kate Haas, representing the Association of Health Information Outsourcing Services (AHIOS), testified **in opposition** to **S 1346aa**. Idaho is one of seven states without cost regulation. This is a different business model with a per-page cost to cover man hours and security to assure the appropriate records are transmitted in a secure way. Third party providers have contracts with the hospitals, who also outsource with a variety of other entities, such as laboratories. She expressed concern regarding the non-inclusion of the targeted industry in producing this legislation. Ms. Haas requested the committee hold **S 1346aa** with the suggestion the issue be addressed during the legislative interim.

Jeff Owens, Attorney, testified **in support** of **S 1346aa**. The records provided to patients do not include nurses' notes and other details used in court cases. Patient portals provide only the information the hospitals think the patients need. He questioned the confidentiality of records received in bankers boxes via a delivery service.

John Foster, representing Ciox Health, testified **in opposition** to **S 1346aa**. Ciox works with nearly fifty Idaho hospital systems, medical clinics and small practice groups. They work to provide the patient information in compliance with state and federal law. This legislation seeks to regulate and dictate the terms of private contracts. Ciox Health was not consulted in the drafting of this legislation.

Federal law provides information to patients without charge. Other requests come from insurance companies and attorneys. There are strict federal requirements for releasing records which includes careful review across multiple providers and electronic systems to assure only the authorized records are provided. He shared concern regarding the consequences of a flat rate. His client is open to setting reasonable fees and even bypassing some fees completely. Protecting the patient's privacy is why the process exists. He requested **S 1346aa** be held in committee to allow time to work on a compromise for next session.

Answering a question, **Mr. Foster** explained multiple provider records must be reviewed before the release of any information. Attorneys who make broad record requests must expect it to take longer to receive the information.

Rep. Ferch declared Rule 80 stating a possible conflict of interest.

MOTION:

Rep. Ferch made a motion to **HOLD S 1346aa** in committee.

Sen. Ricks, in closing, stated this is a complicated issue. He asked the committee to note this legislation was drafted before **Ms. Haas** and **Mr. Foster** signed with the clients they are representing today. This bill may not be perfect and some additional guidelines may be needed in the future. But the cost issue exists right now. This is a personal rights issue and someone shouldn't be charged excessive amounts for their own records. Other states allow a specific per-page amount up to a specified page limit with an additional per-page cost beyond that limit. They also allow a handling or processing fee. Idaho needs to stop these unrestricted overcharges.

SUBSTITUTE MOTION:

Rep. Gibbs made a substitute motion to **HOLD S 1346aa** in committee until time certain, Wednesday, March 16, 2022.

ROLL CALL VOTE:

A roll call vote was requested. **Motion failed by a vote of 5 AYE and 8 NAY.** **Voting in favor** of the motion: **Reps. Wood, Gibbs, Chew, Rubel, Burns.** **Voting in opposition** to the motion: **Reps. Vander Woude, Blanksma, Kingsley, Christensen, Lickley, Erickson, Ferch, Mitchell.**

VOTE ON ORIGINAL MOTION:

Chairman Wood called for a vote on the original motion to **HOLD S 1346aa** in committee. **Motion carried by voice vote.** **Reps. Gibbs** and **Wood** requested to be recorded as voting **NAY.**

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 9:57 a.m.

Representative Wood
Chair

Irene Moore
Secretary